

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1389 OF 1993
And
WRIT PETITION NO.1390 OF 1993

WP NO.1389 OF 1993

1. Kaikobad Byramjee and Son)
(Agency) Private Limited,)
having its office at No.1,)
Gymnasium Road, Times of India)
Building, Bombay - 400 001.)
2. Mr.Khushrooh P.Byramjee of)
Bombay, Indian Inhabitant,)
residing at Queen's Chambers,)
3rd Floor, 89, M.Karve Road,)
Bombay - 400 020.).. Petitioners

Versus

1. The Union of India,)
through the Secretary,)
Ministry of Defence.)
 2. The Flag Officer,)
Commander in Chief,)
Headquarters Western Naval)
Command, Bombay.)
 3. The Defence Estate Officer,)
Bombay Circle, Colaba,)
Bombay - 400 055.).. Respondents
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WP NO.1390 OF 1993

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Shri M.P.S.Rao i/b Desai Birjis & Chinoy for the
petitioners.

S/Shri Y.S.Bhate with Y.R.Mishra & D.A.Dube for the
respondents.

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CORAM : R.M.S.KHANDEPARKAR &
V.M.KANADE, JJ.

DATED : 29th AUGUST, 2005.

ORAL JUDGMENT : (Per R.M.S.Khandeparkar, J)

1. Since common questions of law and facts arise
in these petitions, they were heard together and are
being disposed of by this common judgment.

2. The petitioners by these petitions seek relief
in the nature of writ for direction to the respondents

to forthwith implement the de-hiring policy by which the private premises came to be occupied on rent by the defence service personnel and further for direction to hand over vacant and peaceful possession of the flats in occupation of the respondents for giving effect to such dehiring policy in relation to the suit flats.

3. In the Writ Petition No.1389 of 1993, the suit premises comprise of Flat No.5 whereas in the Writ Petition No.1390 of 1993, the same comprise of Flat No.8 in the Prince Court, situate at Mereweather Road, Colaba, Bombay, and both the flats came to be occupied by the respondents since 1944 consequent to the agreement executed in respect of each of the flats separately on 7th September, 1944.

4. It is the contention of the petitioners that inspite of the flat being not required to be occupied and used by the respondents and inspite of their policy to dehire the private premises which were taken on rent or requisitioned, the respondents are illegally withholding the possession of the suit flats. It is also the contention of the petitioners that though the possession of the premises was taken over consequent to the agreement between the parties,

it was infact requisitioned in terms of Rule 75A of the Defence of India Rules, 1939 which were framed in terms of the Defence of India Act, 1939. Being so, and since the premises are no longer required by the respondents, apart from the fact that their policy of dehiring of the private premises which came to be occupied in terms of the said provisions of law, it was incumbent upon the respondents to deliver the vacant possession of the suit flats to the petitioners and having failed to do so, the petitioners are compelled to approach this Court. It is their further contention that though the parties had executed the agreement, while confirming the occupation of the suit flats by the respondents, it was clearly mentioned in the agreement that such occupation was for war purpose in exercise of powers under the provisions of Rule 75-A(1) of the Defence of India Rules. Being so, the petitioners are entitled to seek necessary relief by approaching this Court in writ jurisdiction.

5. On the other hand, it is the case of the respondents that dehiring of the premises belonging to private premises is being done as and when the premises are found to be not required for occupation of the defence personnel and accordingly the premises will be dehired as and when occasion arises.

6. While referring to the various correspondence between the parties which according to the learned Advocate for the petitioners reveal a clear intention on the part of the respondents to vacate the premises in terms of their policy of dehousing of private premises which came to be occupied by the defence personnel on rent as well as referring to the agreement dated 7th September, 1944 between the parties which, according to the learned Advocate, refers to the requirement of the premises for war purposes and occupation thereof being in exercise of the powers under Rule 75A(1) of the said Rules, it is sought to be argued that since the purpose for which the premises came to be occupied no more subsists, the suit flats in question being not required to be occupied by the respondents, the premises being for most of the time kept closed, besides there being clear policy to dehouse the private premises, it was incumbent upon the respondents to deliver the vacant possession of the suit flats to the petitioners and having failed to do so, the Court should direct the respondents to implement their policy and deliver the possession of the suit flats to the petitioners.

7. The contention of the learned Advocate for the

respondents is to the effect that the agreement dated 7th September, 1944 clearly disclosed the relationship of the landlord and tenant between the parties and being so, the provisions of the Rent Act in force are clearly attracted and would be applicable for the purpose of eviction of the person in occupation of the suit flats as the tenant. It was, however, sought to be contended on behalf of the petitioners that the provisions which are presently in force, i.e. Maharashtra Rent Control Act, 1999, are not applicable to the premises since the premises, which are in occupation, are in the building which has been constructed on a land belonging to the local authority and this fact being not in dispute, considering the provisions of Section 3(1)(a) of the Maharashtra Rent Control Act, 1999, the provisions of the Rent Act would not apply.

8. Upon hearing the learned Advocates for the parties and perusal of the records, it is apparent that the occupation of the respondents in the premises is in the nature of lessees and this fact has been clearly confirmed by the agreement dated 7th September, 1944 executed between the parties. Undoubtedly, the agreement refers to section 75A of the Defence of India Rules, 1939. In fact, it is not

the Section in the Act but it is a rule from the Defence of India Rules, 1939.

9. Rule 75A(1) of the Defence of India Rules provided that if in the opinion of the Central Government or the Provincial Government, it is necessary or expedient so to do for securing the defence of British India, public safety, the maintenance of public order or the efficient prosecution of the war, or for maintenance supplies and services essential to the life of the community, that Government may by order in writing requisition any property, moveable or immoveable, and may make such further orders as appear to that Government to be necessary or expedient in connection with the requisitioning provided that no property used for the purpose of religious worship and no such property as is referred to in rule 66 or in rule 72 shall be requisitioned under the said Rules. Obviously, the Rule 75A speaks of the power of the Government to hire any property, immovable or otherwise, whenever it was required for efficient prosecution of the war or for maintenance of supply and services essential for the war. However, such requisition was to be made by the Government by issuing the order in writing. The provision is very clear in that regard. Besides, the

very concept of requisition of a property is contrary to a voluntary execution of the agreement delivering the possession of the property to the Government by a private party. The requisition does not require willingness on the part of the owner of the premises, nor the consent of the owner is required for the purpose of requisitioning the property. That is not the case in relation to the agreement between the parties. An agreement implies consent and willingness on the part of the parties thereto, and therefore, of the owner of the premises or consent of the party delivering the possession to the lessees. Being so, provision under Section 75A(1) cannot be attracted under any circumstances in relation to the agreement entered into between the parties in the case in hand which was executed on 7th September, 1944. Mere reference to Rule 75A of the said Rules in the said agreement will not make an agreement by itself be an order of the Government under the said Rule. The Rule specifically provides for an order by the Government and not mere agreement between the parties. Being so, occupation of the respondents in the suit premises cannot be said to be by virtue of requisition of the premises by the Government. It was purely by virtue of an agreement entered between the parties in that regard. The agreement was essentially for rent.

Hence, the respondents are apparently the lessees in relation to the suit premises.

10. Section 3(1)(a) of the Maharashtra Rent Control Act, 1999 provides that the said Act shall not apply to any premises belonging to the Government or a local authority or apply as against the Government to any tenancy, licence or other like relationship created by a grant from or a licence given by the Government in respect of premises requisitioned or taken on lease or on licence by the Government, including any premises taken on behalf of the Government on the basis of tenancy or of licence or other like relationship by, or in the name of any officer subordinate to the Government authorised in this behalf; but it shall apply in respect of premises let, or given on licence, to the Government or a local authority or taken on behalf of the Government on such basis by, or in the name of, such officer. The provision of law specifically provides that the same shall apply to the premises let out to the Government or any local authority or taken on behalf of the Government. Apparently, there is absolutely no substance in the contention that the provisions of the Rent Act are not applicable to the premises in question.

11. The learned Advocate for the petitioners had drawn our attention to the decision given by the Division Bench of this Court in the Notice of Motion No.3234 of 1989 in Appeal No.1294 of 1989 in Writ Petition No.3038 of 1989 on 20th March, 1990. Therein, while dealing with the Government policy for dehiring of the private premises and considering the premises of the party to that proceedings were being occupied by the respondents, it was held that "We hope, however, that the necessary decision as to dehiring will be taken expeditiously and also on or before 18th April, 1990 at the latest." Apparently, the same does not disclose any direction in the nature which was asked for in the present petition. The direction was merely to take appropriate decision bearing in mind the policy of dehiring of the private premises. Being so, the said decision is of no help to the petitioners in the cases in hand.

12. However, the fact remains that the possession of the premises was taken by the respondents in the year 1944 during the Second World War and prior to the independence of our country. Undisputedly, the rent which is being paid continues to be at the old amount of rent. It cannot be also disputed that the building

has completed more than 60 years. In the circumstances and bearing in mind that the occupants are none else than the government, it would be in the interest of justice that the respondents to take appropriate decision as sought to be argued on behalf of the petitioners, and more particularly in view of their own policy of dehousing, though it will not be proper for this Court to issue any direction in that regard as it would virtually amount to encroaching upon the jurisdiction of the competent authority under the Rent Act. Nevertheless, bearing in mind the series of letters disclosing repeated assurances on the part of the respondents to take appropriate decision to vacate the premises as early as possible, the respondents in that regard are certainly expected to take appropriate decision as expeditiously as possible. In fact, the respondents should not have waited for this Court to make these observations in the matters and more particularly when the similar directions were given in another case as long back as in the year 1990.

13. With above observations, the petitions are dismissed. Rule in both the petitions is discharged with no order as to costs.

(R.M.S.KHANDEPARKAR, J)

(V.M.KANADE, J)